Appendix.

CITY OF MIAMI v. THE SIROCCO COMPANY.

Opinion Filed April 28, 1939.

An appeal from the Circuit Court for Dade County, Paul D. Barns, Judge.

J. W. WATSON, JR., E. F. P. BRIGHAM and W. H. BURWELL, for Appellant;

WALTER O. MARSHBURN, GRADY C. HARRIS and MIDDLETON McDONALD, for Appellee.

TERRELL, *C. J.*—This is a suit in equity to recover the value of lands appropriated for a street or highway by the City of Miami through government lots one and two, Section nineteen, Township Fifty-three, South Range twenty-two East, Dade County. The bill of complaint prays that the City be required to institute condemnation proceedings to determine the value of said lands or that the Court find and fix the amount of compensation plaintiff is entitled to for them and that a lien be decreed against them as security for said amount. A motion to dismiss the bill of complaint was overruled and this appeal was prosecuted from that decree.

The question brought up for determination is whether or not the Sirocco Company is entitled to be compensated for the lands appropriated by the City and this question turns on that of where the title to the lands appropriated was vested at the time of the appropriation. The fact that they were appropriated for the purpose charged is not denied.

The Sirocco Company relies on an equitable lien in and to the lands and the right therein guaranteed to it by Section Twenty-nine, Article Sixteen of the Constitution and Section Twelve of the Bill of Rights, Constitution of Florida, as construed in *Hillsborough County* v. *Kensett*, 107 Fla. 237, 144 So. 393, and *Rosenbaum & Little* v. *State Road Department*, 129 Fla. 723, 177 So. 220. Section Twenty-nine, Article Sixteen of the Constitution requires that lands of private persons be condemned and "full compensation" made therefor under the facts related, if in reality they were owned by complainant.

Appellant contends that the lands appropriated by it were at the time a part of the public domain of the United States and were subject to appropriation for highway and street purposes under Section 2477, United States Revised Statutes, also Section 932, Title 43, Public Lands, U. S. C. A. which provides that "the right of way for the construction of highways over public lands, not reserved for public use, is hereby granted." If this contention is correct, the City had a right to appropriate the lands for its uses.

As to status of the title, the record discloses that on May 28, 1919, Wayne Realty and Investment Company, a Florida Corporation, conveyed the lands in question by warranty deed to Francis S. Whitten, who in turn on June 23, 1925, conveyed them to Manhattan Real Estate Company a Florida Corporation, and that they were on the 27th day of January, 1927, conveyed by the grantee of Whitten to the Sirocco Company, appellee, in this case. Whitten went into possession and made improvements of the lands. The record does not disclose the source of the title of Wayne Realty and Investment Company or any of its grantees.

Litigation ensued over the title and in December, 1931, the Department of the Interior of the United States decided that title to said lands had never passed from the Federal Government, that the Government still owned them, but that on account of Whitten having entered into possession and having improved them, he was entitled to apply for and receive title to them. Whitten on January 2, 1932, accordingly applied for and received title thereto and on March 20, 1933, he conveyed his title, less that to the land appropriated for streets and highways by the City to appellee, the Sirocco Company.

From November, 1925, to sometime in December, 1926, the City appropriated a right of way over lots one and two by the construction of a street or highway and by laying sidewalks, water mains, and sewer pipes thereon. The City therefore appropriated the lands more than six years before Whitten acquired title from the federal government which was in turn conveyed to appellee.

If Whitten or Wayne Realty and Investment Company had been homestead entrymen in regular course or had legally preempted or taken possession of lots one and two, there would be no question of Appellee's equitable title and its right to recover but so far as the record discloses, Appellee and all its predecessors in title were nothing more than squatters and had acquired no legal status whatever as to the lands in question at the time of appropriation by the City.

Whitten's legal title was not acquired until January 2, 1932, more than six years after the City's appropriation. The fact that the Federal Government permitted him to apply for the lands at this time was merely a courtesy which is frequently extended in such cases. It recognizes nothing more than a moral

right. During all these years, Whitten and his successors in title including appellee, stood by and watched the City make its improvements and made no attempt whatever to prevent them or to assert any legal claim in the lands. The streets appropriated now constitute Biscayne Boulevard and the Federal highway, the main thoroughfares into the City from the North.

We have examined every case relied on by Appellee and it appears that the entryman in all of them was in possession or claimed by some legal color of title but in the case at bar, the record does not disclose that appellee or his predecessors claiming adverse to the City had any legal color of title whatever until the Federal government released its right to Whitten in 1932.

It is settled law that after a legal entry is made on the public lands under which the entryman becomes entitled to a patent when the required prerequisites are met, he holds the beneficial or equitable title and the government holds the naked legal title in trust until the issuance of the patent. The entry is the inception of his claim and by it, the lands entered are segregated from the body of the public lands. When so withdrawn, they are no longer subject to entry or preemption or sale until the former entry is cancelled. 22 R. C. L. 260.

In this case, no formal or legal entry was filed or was shown to be of record at the time the City appropriated for streets and highways. Those acquiring title subsequently took subject to the City's claim. *Flint & P. M. Ry. Co.* v. *Gordon,* 41 Mich. 420, 2 N. W. 648; *Keen* v. *Board of Supervisors of Fairview Township,* 8 S. D. 558, 67 N. W. 623; *Duffield* v. *Ashurst,*

12 Ariz. 360, 100 Pac. 820; *Sams* v. *Port Royal & A. Ry. Co.*, 15 S. C. 484.

Other questions argued have been considered but we do not think it necessary to discuss them. If the City's appropriation was an unreasonable one from the standpoint of the amount appropriated or resulted in damage to Appellee's improvements, there may be a basis of recovery to that extent but a reasonable appropriation for right of way purposes was authorized under the federal law and for this there is no right of recovery. The judgment is therefore reversed.

Reversed.

Buford and Thomas, *J. J.*, concur.

Brown, *J.*, concurs in opinion and judgment.

Justices Whitfield and Chapman not participating as authorized by Section 4687 Compiled General Laws of 1927 and Rule 21-A of the Rules of this Court.

BRIEF FOR THE RESPONDENTS IN OPPOSITION

(22)

FILED
SEP 8 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 517

THE SIROCCO COMPANY
Petitioner,

v.

THE CITY OF MIAMI,
Respondent.

RESPONDENT'S BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

JOHN W. WATSON, Jr.,
Counsel for Respondent

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THE SIROCCO COMPANY
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RESPONDENT'S BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

HISTORY OF THE CASE

This is a suit in equity against the City of Miami seeking to recover the value of lands appropriated for streets and highways of the City of Miami through Government Lot 2, Section 19, Township 53 South, Range 22 East, Dade County, Florida. The lands appropriated now constitute a part of Biscayne Boulevard and the Federal Highway, the main thoroughfares into the city from the north (R. 74).

This cause has been before the Supreme Court of Florida on two occasions. The first opinion was filed

April 28, 1939 (Petition 22-27) styled City of Miami vs. the Sirocco Company, and the second opinion was filed April 1, 1941 (R. 86; rehearing denied, R. 90). On both occasions the Supreme Court of the State of Florida decided the question in the City of Miami's favor.

The City of Miami in 1926 took possession of the lands involved, appropriating them for streets and highway purposes (R. 74). When the City of Miami took possession of the said lands they were the property of the United States government, and not until 1931 was a valid application for a patent filed for them. This valid patent was issued on January 2, 1932, to Francis S. W. Whitten (R. 63). The City had then been in possession for six years.

The petitioner, Sirocco Company, asserts its title to the land by virtue of two warranty deeds from Francis S. Whitten, one dated March 20, 1933 (bottom R. 67) and the second dated March 5, 1938 (R. 73). The first conveyance from Francis S. Whitten to the Sirocco Company specifically **excepted and omitted** the property used and occupied by the City of Miami for street and highway purposes (R. 68). This excepted property is the basis of this action. The second deed was executed more than two years after the date of the filing of the original bill of complaint in 1935 (R. 1), but it included the streets and highways and also specifically assigned to The Sirocco Company any claim that Whitten had against the City of Miami for the taking of said streets and highways. Its execution was twelve years after the City had been in possession of the streets.

SUMMARY OF ARGUMENT

POINT A. The City of Miami had a right to appropriate the land for highway purposes under Section 2477, U. S. Revised Statutes; also 43 U. S. C. A. 932, which provides:

> "The right-of-way for the construction of highways over public lands not reserved for public uses is hereby granted."

POINT B. There has been three patents on the land involved; first, the Gleason patent which was reviewed by the Supreme Court of the United States (Gleason v. White, 199 U. S. 54) and this decision swept aside Gleason's claim and held the lands to be public lands; secondly, the Pent patent was cancelled by the Department of Interior (R. 31), and this cancellation was affirmed and recognized by the petitioner's grantor, Whitten, in his motion for rehearing before the Department of Interior (R. 54); the third patent, to Whitten in 1932, is the first and only valid one and is so acknowledged by the petitioner (R. 65, line 32). It was issued more than six years after the City had appropriated the land for street purposes. Therefore the land was public domain when the City made the appropriation in 1925.

POINT C. Francis S. Whitten, or his grantee, Sirocco Company, had allowed the City of Miami to take, use and occupy the land without a demand therefor from 1925 until 1935, when the first bill of complaint was filed (R. 1). This laches would preclude a recovery in equity, as well as creating an estopel by virtue of

Sections 4652 and 4656 of the Compiled General Laws of Florida of 1927, which read as follows:

> **"No action for the recovery of real property or for the recovery of the possession thereof shall be maintained unless it appears that the plaintiff, his ancestor, predecessor or grantor was seized or possessed of the premises in question for seven years before the commencement of such action." (Chapter 1869, Florida Acts of 1872, Section 2).**
>
> **"Where it shall appear that there has been an actual continued occupation for seven years of premises under a claim of title exclusive of any other right, but not founded upon a written instrument or a judgment or decree, the premises so actually occupied and no other shall be deemed to have been held adversely." (Section 7 of Chapter 1896, Florida Acts of 1872);**

ARGUMENT

The petitioner in its Brief, at page 15 of Petition for Writ of Certiorari, under **"The Facts"** states that it claims under the Pent entry, while in the proceeding before the Secretary of the Interior, Gainesville (Nos. 016724F, JPH, 016857, 018596), the petitioner's grantee, in a motion for re-hearing (R. 54), asked that the ruling of the Commissioner be affirmed, which ruling (R. 31 & 54) held "Pent's entry was legally can-

celled after due procedure and cannot be reinstated * * *."

The position before this Court in these proceedings is directly contrary to the position taken before the Secretary of Interior (R. 54) and contrary to the allegations of the amended bill of complaint (R. 65, line 32) which aver that the Whitten patent was the first valid one.

POINT A. The City of Miami had a right to appropriate the land for highway purposes under Section 2477, U. S. Revised Statutes; also 43 U. S. C. A. 932, which provides:

> **"The right-of-way for the construtcion of highways over public lands not reserved for public uses is hereby granted."**

The Supreme Court of Florida in its first opinion in this cause reported in 137 Fla. 434, 188 Southern 344 (Petition 23-27), held the Bill of Complaint insufficient and that it did not show a right of recovery in the plaintiff. Speaking of the lands involved the Florida Supreme Court said:

> "Litigation ensued over the title, and in December, 1931, the Department of the Interior of the United States decided that title to said lands had never passed from the Federal Government, that the Government still owned them, but that on account of Whitten having entered into possession and having improved them, he was entitled

to apply for and receive title to them. Whitten on January 2, 1932, accordingly applied for and received title thereto, and on March 20, 1933, he conveyed his title, less that to the lands appropriated for streets and highways by the City, to appelee, the Sirocco Company.

"From November, 1925, to sometime in December, 1926, the City appropriated a right of way over lots one and two by the construction of a street or highway and by laying sidewalks, water mains, and sewer pipes thereon. The City therefore appropriated the lands more than six years before Whitten acquired title from the Federal Government which was in turn conveyed to appellee."

Briefly stated, the only difference between the original bill before the Supreme Court of Florida in the case of City of Miami v. The Sirocco Company (supra), and the present amended bill now before the Court, is that in the former there was an omission to show an entryman, and in the latter it affirmatively shows there was no legal entryman prior to the entry of the City. This amended bill affirmatively shows by a positive allegation that the first valid patent was in 1932 (R. 65, line 32), and that exhibits 4 and 5 (R. 53) show the Pent entry has been cancelled and so recognized by Whitten.

The amended bill shows the land was appropriated by the City in 1925 and 1926 for the building of said

streets and highways (R. 27 & 31) and was subject to appropriation for streets and highways (R. 53 & 54).

The Federal Courts have held that this was government land after the entry of the City in 1925 or 1926. In the case of Work v. Read, 10 Fed. (2) at page 637, opinion dated December 7, 1925, we find on page 639:

> "If the claim of Whitten is swept aside, as it must be, and Gleason is confined to the lands originally patented to him, as he must be, the lands in question are concededly public lands of the United States, subject to homestead entry."

> "A careful reading of the opinion discloses that the mistake referred to was the issuance of the Gleason patent under the survey of 1845, instead of the survey of 1875, and the refusal of the department to 'extend the confusion by furnishing patents under the survey of 1875' refers unquestionably to further patents in the way of attempting to correct the mistake made in following the 1845 survey when the Gleason patent was issued."

> * * *

> "It will be observed that this decision completely defines Gleason's rights, and disposes of all further contention as to his title extending beyond the limits of lots 1 and 2, 1845 survey, or lots 3, 4, 6 and 7, 1875 survey. The balance of the land in Section

> 19 remained Government land, and it was so recognized by the Supreme Court in sustaining the patent to the State of Florida for lot 5. The status, therefore, of lots 1 and 2, 1875 survey, was settled by the Supreme Court in its decision, and no longer remains an open question."

Again in the case of **Read v. Work, 32 Federal (2), p. 413,** opinion dated April 1, 1929, we read:

> "With the issue of the Gleason title determined, and the further determination that it is public land, the whole question is thrown open for investigation as if the misapprehension in the Department which led to this litigation had not occurred."

The Department of Interior also held that this was government land until 1931, and allowed Whitten's entry to be filed at that time (R. 52-53).

The Commissioner of the General Land Office, in his opinion, dated Dec. 8, 1930 (R. 31), said:

> "Pent's entry was regularly cancelled after due procedure, and cannot be reinstated in the presence of adverse claim. In view, however, of the subsequent determination by the Supreme Court that lots 1 and 2 were public land, it is the plain duty of the Government to protect a claimant possessed of equities growing out of the Pent entry as against a mere paper applicant. The present record owners of the greater

> portion of lot 2 under title running from Pent will therefore be allowed thirty days from notice hereof within which to apply for said lot under any applicable public land law."

The Commissioner further ruled as follows:

> "Whitten and his assigns are entitled to a preferred right to make entry for Lot 2" (R. 33 No. 4).

This last permission for Whitten to make an entry, given in 1931, shows that there was no entryman recognized by the government at that time, yet the streets had been constructed between 1925 and 1926.

Francis S. Whitten, as will appear from Exhibit No. 5 (R. 53) attached to plaintiff's amendment, and which are made a part of this amended Bill, filed with the Secretary of the Interior a motion for rehearing with reference to Lot 2 according to the survey of 1875.

We quote from the Motion for Rehearing, Plaintiff's Exhibit No. 5 (R. 54), as follows:

> "In view of the fact that Counsel for Whitten in their brief filed in February, 1931, asked that the decision of the Commissioner should be affirmed, and that the Secretary should hold that the Sirocco Company, successor in interest to Whitten, had a preferred right to purchase Lot 2, and in view of the further fact that by exercising

> that preferred right and the perfecting by Whitten of his title to Lot 2, doubts of the validity of this title of Whitten's claimed under Pent's entry and the restoration thereof, would be eliminated, the ruling of the Department should grant to Whitten preferential right to purchase Lot 2 and perfect his title thereto."

The Department of Interior, as is shown from the Plaintiff's Exhibit No. 4 (R. 52) which is made a part of the amended bill, entered an order on the Motion for Rehearing filed by Whitten, and I quote therefrom as follows, to-wit:

> "The Department is of the opinion, after careful consideration of the entire record, that in equity and good conscience Whitten should be allowed to perfect title to said Lot 2 in the exercise of a recognized preference right.
>
> "Movant presents a post-office money order for $7.05, fee and commissions, and a sufficient valid script to take the land based on unused 40.50 acres of a re-certified right of William M. Hazelgrove for 122.50 acres, which, with the certificate of re-certification duly assigned, passed through mesne conveyance to Marty T. Breen, who assigned 40.50 acres thereof on October 26, 1931, to Whitten.
>
> "The governing regulations in the matter of filing former soldier's additional home-

> stead application, posting, publication and submission of non-mineral affidavit, are dispensed with and the Commissioner will direct the local office to place the entry of record by assigning a serial number thereto, to issue final certificate in the name of Francis S. Whitten, and to transmit same by special letter whereupon patent will issue."

It is settled law that the Commissioner of the General Land Office and the officers of the Land Department were created and vested with power to settle controverted questions of fact with reference to the status of the public lands and that such decisions are final.

McGoldrick Lumber Company v. Kinsolving (C. C. A.) 221 F. 819.

Devil's Den Consolidated Oil Co. v. United States (C. C. A.) 251 F. 548.

22 Ruling Case Law 303 and 304.

Thus, it will be seen that the Whitten entry was not made until after the order of the Commissioner just quoted, which is dated December, 1931, and that the land remained public domain until then.

POINT B. There has been three patents on the land involved; first, the Gleason patent which was reviewed by the Supreme Court of the United States (Gleason v. White, 199 U. S. 54) and this decision swept aside

Gleason's claim and held the lands to be public lands; secondly, the Pent patent was cancelled by the Department of Interior (R. 31), and this cancellation was affirmed and recognized by the petitioner's grantor, Whitten, in his motion for rehearing before the Department of Interior (R. 54); the third patent, to Whitten in 1932, is the first and only valid one and is so acknowledged by the petitioner (R. 65, line 32). It was issued more than six years after the City had appropriated the land for street purposes. Therefore the land was public domain when the City made the appropriation in 1925.

The amended bill alleges that Whitten deraigns his title from the Gleason and Pent entries (R. 58). Gleason procured a patent covering Government Lot 2. However, this patent covered Government Lot 2 according to the survey of 1845. There was a later survey in 1875. The government lot 2 of the survey of 1845 did not coincide with government lot 2 according to the survey of 1875, nor does the said government lot 2 according to the survey of 1845 cover any part of government lot 2 according to the survey of 1875. This fact is fully covered and explained in maps printed in the case of **Gleason v. White, 199 U. S. 54.** The Supreme Court of the United States in the case of **Gleason v. White,** supra, as well as the Court of Appeals in and for the District of Columbia in the case of **Work v. Reed, 10 Fed. (2) 637,** held conclusively that Gleason had no right to any part of government lot 2 of the survey of 1875, and that those holding under him did not acquire any right to any portion of government lot 2 according to the survey of 1875.

Therefore, the Sirocco Company cannot make any claim, and I do not understand that it does make claim, to any part of government lot 2 of the survey of 1875 under the Gleason patent, and that is the property involved in the case at bar.

The Pent entry was cancelled and this cancellation was recognized because Francis S. Whitten, as will appear from Exhibit 5 (R. 53), filed with the Secretary of the Interior a motion for re-hearing with reference to government lot 2. In said motion Whitten asked that the Cancellation of the Pent patent be affirmed (R. 54). Those proceedings have been argued supra. The order on said motion for re-hearing by the Department of Interior dated December 22, 1931, eliminated the Pent entry and allowed Whitten to then file his application for patent (R. 52).

The Supreme Court of Florida stated (Petition 25) that to permit Whitten to apply for the land at this time was

> "merely a courtesy which is frequently extended in such cases. It recognizes nothing more than a moral right. * * * * * We have examined every case relied upon by petitioner and it appears that the entryman in all of them was in possession, or claimed by some legal color of title, but in the case at bar, the record does not disclose that the appellee, or his predecessors, claiming adverse to the City, had any legal color of title whatsoever until the Federal Government released its right to Whitten in 1932."

The petitioner accepted these rulings and in the Amended Bill of Complaint (R. 65, line 32) even alleges that the first valid patent was issued to Francis S. Whitten in 1932.

Construing the entire record, including the exhibits to the present amended bill, and in the light of the various Court and Department decisions, it affirmatively appears that the patent was not issued to Whitten on an application based upon any prior actual legal right. Had the Government found that Whitten was entitled to the patent, as an assignee, or grantee, of Pent, then there would have been no need for a new application for the reason that the Pent entry would of itself have been conclusive and the patent would have been issued to Whitten, as assignee of Pent on the Pent entry, without additional application. Whitten, through his counsel, recognized the futility of such a claim and protested the issuance of patent thereon (R. 53), and requested permission to make a new application. The opinion of the Florida Supreme Court was correct in holding that the granting to Whitten of this right to apply for a patent was extended to him merely as a "courtesy" and recognized nothing more than a moral right.

I cannot conceive how, in the face of this record, as presented in the amended bill of complaint, it can be successfully contended that any title in any claimant was recognized by the Federal Government prior to its final order of December, 1931. The fact that the Federal Government required this new application in December, 1931, is self-evident of the denial of the claim of all claimants prior to December, 1931.

POINT C. Francis S. Whitten, or his grantee, Sirocco Company, had allowed the City of Miami to take, use and occupy the land without a demand therefor from 1925 until 1935, when the first bill of complaint was filed (R. 1). This laches would preclude a recovery in equity, as well as creating an estopel by virtue of Sections 4652 and 4656 of the of the Compiled General Laws of Florida, 1927, which read as follows:

> **"No action for the recovery of real property or for the recovery of the possession thereof shall be maintained unless it appears that the plaintiff, his ancestor, predecessor or grantor was seized or possessed of the premises in question for seven years before the commencement of such action." (Chapter 1869, Florida Acts of 1872, Section 2).**
>
> **"Where it shall appear that there has been an actual continued occupation for seven years of premises under a claim of title exclusive of any other right, but not founded upon a written instrument or a judgment or decree, the premises so actually occupied and no other shall be deemed to have been held adversely." (Section 7 of Chapter 1896, Florida Acts of 1872);**

It appears from the Amended Bill of Complaint that at the time the City of Miami entered into possession of the land the title through which the petitioner claims was then alleged to be in the Manhattan Real Estate Company, a Florida corporation (R. 66). The Manhat-

tan Real Estate Company conveyed this land to petitioner on January 27, 1927, by special warranty deed (R. 67). The Manhattan Real Estate Company and the Sirocco Company at this time realized and **recognized the rights of the City of Miami** as is evidenced by an assignment included in the deed to the plaintiff, the Sirocco Company, in which the Manhattan Real Estate Company attempts to assign (R. 67) to the Sirocco Company all of its rights, title and claim arising by reason of the appropriation of the land by the City. **Although this assignment was dated January 27, 1927, no effort was made by either of these corporations to enforce this right, or any right, or claim against the City of Miami until the filing of the original Bill of Complaint in December, 1935. The City, therefore, held an unquestioned right, possession and title to this land as against both of these corporations from December, 1926, to December, 1935, a period of nine years.**

In considering this matter, it must be borne in mind that Whitten received his patent in January, 1932. That the Sirocco Company, recognizing that it had no title to any of the land, sought and secured from Whitten a warranty deed as the holder of the legal title to the property. Whitten executed this deed in 1933 conveying all of the property except that portion held in the streets here involved (R. 67). Whitten thereby recognized the right and possession of the City to the land which it had taken possession of in 1925, eight years prior to the deed from him to the Sirocco Company, and in specific terms omitted this land from his deed. This deed of Whitten's placed the legal title to all Government Lot 2, except the streets, in the name of the

Sirocco Company. Not until 1938 could the Sirocco Company claim any interest or title against the City, or any land occupied by the City (R. 73), when it obtained its second deed and assignment from Whitten. I respectfully contend that the petitioner is without any right now to maintain this action as an assignee who had no legal title and was not in possession at the time that the entry by the City was made.

CONCLUSION

The record affirmatively shows that the petitioner could not deraign its title from the United States Government until 1932 (Whitten's patent) (R. 65, line 32) so when the City took the lands (using them for arterial highways which have developed petitioner's adjacent property) the taking was an authorized appropriation of the public domain and petitioner's case must fall.

POINTS PRESENTED BY PETITIONER

The first point presented by the petitioner is not applicable because there has been no erroneous cancellation of an entryman, for Francis S. Whitten recognized by affirmative act the cancellation of the Pent patent, and the United States Supreme Court had cancelled the Gleason patent on the lands in question.

Points 2 and 3 of the petitioner are not in accord with the facts at bar for the decision of the Supreme Court of the State of Florida is in direct accord with the United States Supreme Court opinion of **Gleason v. White, 199 U. S. 54.** It is also in conformity with **Section 2477, U. S. Revised Statutes,** the opinions of the

Circuit Court of Appeals in the cases of **Work v. Reed, 10 Fed. (2) 637, Read v. Work 32 Fed. (2) 413,** and the ruilngs of **Department of Interior.**

A perusal of the cases cited by the petitioner disclose that they are not in point with the questions presented in this cause.

A reading of petitioner's citations show the following respective rulings which do not substantiate the granting of a Writ of Certiorari in this cause:

Cornelius v. Kessel, 128 U. S. 456. Involves the rights of an original entryman whose patent was erroneously cancelled, the cancellation in the reported case was contested, in the case before the bar the cancellation was affirmed by request of Whitten and there was no erroneous concellation.

Carroll v. Safford, 44 U. S. 3 How. 441, 460 (11:671,-680). Certain lands had been entered and paid for, but patent had not been issued, the ruling upheld the validity of the State of Michigan taxes assessed against such lands.

Whiterspoon v. Duncan, 71 U. S. 4 Wall. 210, 218 (18: 339, 342). Held that the State had power to tax lands where an entry is made and a certificate given.

Lindsey v. Hawes, 67 U. S., 2 Blod. 554 (17:265). Reversed the cause and adjudicated that one in possession could not be deprived of his patent rights by ex parte administrative proceedings without notice to him.

Stark v. Starr, 73 U. S. 6 Wall. 402-419 (18:925-930). This is a case from the Supreme Court of Oregon. A bill of complaint in equity to quiet title to real estate was dismissed because the plaintiff could not show title in himself.

Sanford v. Sanford, 139 U. S. 642. The plaintiff and defendant filed for and made improvements on separate and adjoining lots. The defendant, unknown to plaintiff, amended his declaration to include plaintiff's tract and had it included with his; the defendant was deemed to be a trustee for plaintiff.

Hodges v. Colcord, 193 U. S. 1929. Holds that an entry void to the entryman himself will preclude others from acquisition of homestead rights.

Hastings & Dakota R. R. v. Whitney, 132 U. S. 359. Held that where a entry was valid on its face homestead rights would attach.

The Supreme Court of Florida in **The City of Miami v. The Sirrocco Company** (supra) makes a pertinent comment when it said (Petition 26):

> **"We have examined every case relied on by appellee and it appears that the entryman in all of them was in possession or claimed by some legal color of title but in the case at bar, the record does not disclose that appellee or his predecessors claiming adverse to the City had any legal color of title whatever until the Federal Government released its right to Whitten in 1932."**

I respectfully urge that the Writ of Certiorari be denied because the petitioner has not shown a meritorious or equitable cause of action, nor does the petition show any constitutional question involved as the appropriation of the lands for highway purposes was authorized by law, they were not the petitioner's property, and it clearly appears that the opinions of the Supreme Court of Florida are in direct accord with the law of the case.

Respectfully submitted,

JOHN W. WATSON, JR.,

Attorney for City of Miami,
Respondent